

Docket No.: 62781A
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Thomas Oswald, James L. Cooper, Jeffrey Weinhold
and David T. Gillespie

Application No.: 10/566,937

Confirmation No.: 9887

Filed: February 2, 2006

Art Unit: 1796

For: IMPROVES RESIN COMPOSITION FOR
EXTRUSION COATING

Examiner: Gennadiy Mesh

PETITION UNDER 37 CFR 1.181 IN RESPONSE TO NOTICE OF ABANDONMENT

MS PCT
Commissioner for Patents
Office of PCT Legal Administration
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

PETITION UNDER 37 CFR 1.181(a)

This is in response to the Notice of Abandonment dated December 4, 2008. Applicants state that the Office Action mailed by the Office on May 23, 2008 was never received. Applicants therefore petition the Office under 37 CFR 1.181(a) to withdraw holding of Abandonment Based on Failure to Receive Office Action for application number 10/566,937. It is believed that no fee is due for such petition, but if that is in error, the Office is authorized to charge the proper amount to our Deposit Account No. 04-1512, under Order No. 62781A.

With regard to the present application, the PTO's records indicate that a Notice of Non-Compliant Amendment was sent on May 23, 2008, setting a one month period of response subject to extensions of time. On December 1, 2008, Applicants' representative, James Hoppe (registration number 35,899) received a telephone call from the Examiner, Gennadiy Mesh, requesting confirmation that no response had been sent. Applicants' representative confirmed

that no response had been sent as the notice had not been received. A Notice of Abandonment was mailed on Dec 4, and received on December 08, 2008.

Description of the Docketing System:

The applicants for the present application are employed by The Dow Chemical Company (“Dow”) and as such, all correspondence from the USPTO is directed to be sent to Dow’s post office box. The procedure for incoming mail from the USPTO and computer docketing of events (e.g., dates and type of response required,) is as follows:

1. Mail received by Dow and delivered to the intellectual property section of Dow’s legal department’s File Room.
2. File Room Mail Clerk opens/date stamps document.
3. Document is delivered to Docketing.
4. Document is docketed, initialed and dated by Docketing Paralegal.
5. If urgent, a copy of the document is e-mailed to responsible attorney/support staff.
6. Document is returned to File Room.
7. File Room Clerk scans and uploads document into Dow’s document management system which is viewable within the Intellectual Property Management System (Electronic Docketing System).
8. Document is sent/delivered to the attorney’s support staff.

Establishment of Non-receipt of the Office Action:

The first indication of the Notice of Non-Compliant Amendment received by the Applicants was the phone call from the Examiner followed by the receipt of the written Notice of Abandonment. After receiving the phone call, the Notice of Non-Compliant Amendment was downloaded from the USPTO using the PAIR system. Further, the application file was searched and a further investigation was carried out to find any evidence of the receipt of the Notice of Non-Compliant Amendment (search of pertinent mail areas and discussions with responsible employees) by James Hoppe with consultation from Dow’s Leader of IP Business Services

(Laura Reinbold). In the search and investigation, the Notice of Non-Compliant Amendment was not found and no record of receipt of it was found.

Dow employs an electronic docketing system with all docketing information being accessed by each individual agent or attorney. Dockets are run on a periodic basis for each attorney (approximately monthly). The individual electronic docket record for attorney docket number 62781A (Application No. 10/566,937) is attached. This docket record shows no record of receipt of the Notice of Missing Requirements until after the Examiner's phone call on Dec 1, 2008. Also attached is a copy of my working docket for the time in which the Notice of Missing Requirements would have been docketed. As shown by the electronic docket of the individual record for this particular application and my personal docket, there is no record of the Notice of Non-Compliant Amendment until after the Examiner's phone call on Dec 1, 2008.

From the above, I hereby state that the Notice of Non-Compliant Amendment was never received at the correspondence of record and that a search of my records confirms that the Notice of Non-Compliant Amendment was never received.

This is the first instance I can recall in over seventeen years relying upon The Dow Chemical Company's mail and docketing system that I have not received an Office Action, resulting in a Notice of Abandonment.

Applicants are also including a revised amendment with the text for the withdrawn claims shown, as requested in the Notice of Non-Compliant Amendment.

From the above, Applicants' respectfully request Withdrawal of the Holding of Abandonment.

Dated: January 13, 2009

Respectfully submitted,

By /James T. Hoppe/
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